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Supreme Court of the United States

OCTOBER TERM, 1942.

No. 652.

CARL HALFERTY AND J. B. HALFERTY, DOING BUSINESS AS HALFERTY BROTHERS ET AL., PETITIONERS,

VS.

HAWKEYE CASUALTY COMPANY, A CORPORATION, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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No. .....

CARL HALFERTY AND J. B. HALFERTY, DOING BUSINESS AS HALFERTY BROTHERS ET AL., PETITIONERS,

VS.

HAWKEYE CASUALTY COMPANY, A CORPORATION, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable Supreme Court of the United States:

The petition of Carl Halferty and J. B. Halferty, Doing Business as Halferty Brothers, for a writ of certiorari directed to the United States Circuit Court of Appeals for the Eighth Circuit to bring before the Supreme Court the case of Hawkeye Casualty Company, a Corporation, Plaintiff-Appellant, vs. Carl Halferty and J. B. Halferty, Doing Business as Halferty Brothers, Defendant-Appellees.

Said petitioners respectfully show to this Honorable Court as follows:

SUMMARY STATEMENT.

The proper interpretation of the Declaratory Judgment Act (Judicial Code, Sec. 274d, 28 U. S. C. A. 400) is enacted in this procedure.

a. The majority opinion, rendered October 29, 1942, is erroneous, in the construction it makes of the Missouri Legislative Act regarding Commercial Trucking and in its construction of that law it not following the plain intent of the enacting body, the essence of which was to regulate this Service in the public interest, guarding and securing public safety, and to achieve adequate, efficient and economical service, and instead of "Insurance for Commercial purposes" as Commercial is defined, by said opinion, the reasoning recited is contradictory thereof

b. That said majority opinion improperly construes the policy in controversy, by giving priority or preference to the endorsement "Exclusion on Commercial Truck" and thus annuls the Missouri Law as required by Vol. 1, Sec. 5729, R. S. Mo., 1939, p. 1422, as follows:

> "Section 5729. No certificate of convenience and necessity or contract hauler's permit shall be issued by the public service commission until and after such carrier shall have filed with and same has been approved by, the commission of this state, a liability insurance policy or bond in some reliable insurance company or association or other insurer satisfactory to the commission and authorized to transact insurance business in this state, in such sum and upon such conditions as the commission may deem necessary to adequately protect the interests of the public in the use of public highways and with due regard to the number of persons and amount of property transported, with liability insurance shall bind the obligors thereunder to make compensation for injuries to persons and loss or damage to property resulting from the negligent operation of such motor carrier or contract hauler."

c. That said majority opinion erroneously construes the "Motor Carrier" Law, Art. 9, Ch. 35, R. S. Mo., 1939, Vol. 1, p. 1415, by narrowly limiting the Legislative intent, to mean such business as directly affected a common carrier, as to charges and that the omnibus provisions of Section 5729, *Supra,* that could not be required by the Legislature and that P. S. C. was without jurisdiction to require more.

"Motor Carriers" must therefore carry additional Insurance to "adequately protect the interest of the public" if the Legislative purpose of its enactment is properly regarded and the requirement to adequately protect the public and persons and property fail of its purpose, under the majority opinion.

d. The majority opinion errs in deciding Section 5729, *Supra,* and the Missouri Public Service Commission are each limited by the "Exclusion on Commercial Trucks Endorsement" so as to deny the coverage of the Statute and policy, and to exclude protection to the Public and in ruling that "Motor Carriers" in engaging in operation embraced within their enterprise, do not under the endorsements—the Statutes or terms of their Insurance policy—effect this coverage, but on the contrary are not effective, the majority opinion of such construction is so narrow that the public in Missouri is left without recourse for injuries resulting from some of the most common, continuing and omnipresent dangers incident to the operations by said truckers.

e. The majority opinion erroneously fails to respect or credit the decisions of the Supreme Court of Missouri and its Appellate Courts, as Courts of last resort and conflicts with numerous decisions contained in Missouri Court Decisions, which are by said opinion disregarded.

f. That said majority opinion conflicts with the settled course of procedure in Missouri as a complete code is set up thereby, and the Circuit Court of Clinton County,

Missouri, some three weeks prior to the filing of this petition acquired full jurisdiction of all matters involved and could make a full adjudication of all incidents therewith.

g. That said majority opinion conflicts with the established rule of Law "in Missouri" that, in construing contracts of insurance, the rule should be followed, most favorable to the insured, and the law requiring such and the Insurance Code of Missouri to be read into the contract.

QUESTIONS PRESENTED.

Only the construing of an insurance policy or bond is involved in this case. It was issued by the Hawkeye Casualty Company, admitted to Missouri for this purpose and was issued under the Laws of Missouri, and should be controlled by the Statutes of Missouri and judicial opinions therein. The Circuit Court of Appeals, by two of its judges, has handed down an opinion that avoids and annuls the policy, C. J. Woodrow has dissented thereon upholding the decision of the district Judge and affirmed that decision, by the majority opinion being enforced makes necessary this petition being presented.

REASONS FOR THE WRIT.

The scope of the Declaratory Judgment Act and the meaning of Rule 57 of the Rules of Civil Procedure for the District Court of the United States are both here involved. Both are in the foreground of developing tendencies of the law and are of great general importance and interest and their application to cases involving proceedings in state courts should be determined and settled by this court.

(2) That the majority of opinion of Circuit Court of Appeals is in conflict with the decisions of the Supreme Court of the United States and the Supreme Court and Appellate Courts of the State of Missouri.

(3) That the Circuit Court of Appeals has decided a question of local law regarded as in conflict with local decision.

(4) That the Circuit Court of Appeals had decided important question of the Missouri rule as to construction of insurance policy which we respectfully urge should be settled by this Court.

(5) The majority of opinion of the Circuit Court of Appeals is regarded as in conflict with the cases hereinafter cited by brief.

BASIS OF JURISDICTION.

The jurisdiction of this court is invoked under Section 240 of the Judicial Code, as amended by Act of Congress February 13, 1925, Ch. 229, 43 Stat. 938 (28 U. S. C. A. 347).

The judgment of reversal sought to be reviewed was rendered on October 29, 1942, by two of three judges of the United States Court of Appeals for the Eighth Circuit.

The petition of the Plaintiff Hawkeye Casualty Company was filed in the District Court of the United States for the western district of Missouri, at St. Joseph, on December 20, 1941; on April 17, 1942, Otis, Judge, rendered a decision that the motor vehicle involved in the case was within the coverage of the policy at the time of the injury to persons claimed to have been injured and alleged to have been injured, and entered judgment and decree thereon.

From this judgment the Hawkeye Casualty Company took an appeal to the United States Circuit Court of Appeals for the Eighth Circuit and that Court on October

29, 1942, rendered the opinion by Judges Gardner and Riddick reversing the decree of Judge Otis and Judge Woodrough, filed a dissenting opinion affirming the decision of Judge Otis (Copy of said opinion is printed herewith, Appendix A). Thereafter these petitioners filed in said Circuit Court of Appeals a petition for rehearing, which was over-ruled November 14th, 1942.

The petition is based on the Laws of the United States, the Declaratory Judgment Act, being Section 274d of the Judicial Code (28 U. S. C. A. 400) and the lower court decided questions of substance involving matters of law, and conflicting with the established rule of law in Missouri so that it is believed the majority opinion is erroneous and that the decision should be reviewed by this Honorable Court.

The following cases it is believed sustain the jurisdiction of this court to issue its writ of certiorari:

Worcester County Trust Co. v. *Riley,* 58 S. Ct. 185, 302 U. S. 292, 82 L. Ed. 268.

Gay v. *Ruff,* 54 S. Ct. 608, 292 U. S. 25, 78 L. Ed. 1099.

Electrical Fittings Corp. et al. v. *Thomas & Betts Co. et al.,* 59 Sup. Ct. Rep. 860, 307 U. S. 241, 83 L. Ed. 1263.

PRAYER.

Wherefore, your Petitioners respectfully pray that a writ of certiorari be issued under the seal of this court directed to the United States Circuit Court of Appeals for the Eighth Circuit, commanding that court to certify and send to this court for its review and determination on a day certain therein named a full and complete transcript of the record and proceedings in the case of Hawkeye Casualty Company, A Corporation, Plaintiff, vs. Carl Halferty and J. B. Halferty, doing business as Halferty Brothers, Defendants, No. ....., to the end that this cause

may be reviewed and determined by this Court as provided for in the statutes of the United States, and that said decree and judgment of the United States Circuit Court of Appeals for the Eighth Circuit may be reversed by this Honorable Court and that of the District Court affirmed, and that your Petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

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